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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH,
Petitioner,

VS.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO
FRANK T. BARR, et al., Real Parties in Interest,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO

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The General Council on Finance and Administration of The United Methodist Church, an Illinois not-for-profit corporation, (hereinafter called "GCFA") respectfully petitions for a Writ of Certiorari to review the judgment of the Superior Court of the State of California for the County of San Diego in the above entitled case.[1]

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[1] GCFA's request that this Court's Writ issue to the Superior Court for the County of San Diego, as distinguished from a higher California Court, is based on its interpretation of *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 159-160 (1954), and similar decisions construing the terms "highest court . . . in which a decision could be had" as employed in 28 U.S.C. § 1257. Such

(Footnote continued on page 2)

OPINIONS BELOW

The opinion of the Superior Court of the State of California for the County of San Diego takes the form of the portion of that Court's Minute Order reproduced at App. A-2, which concerns Petitioner GCFA. The order of the California Court of Appeal, Fourth Appellate District, refusing GCFA's Petition for a Writ of Mandate, is set forth at App. A-5. The order of the Supreme Court of California denying GCFA's Petition for Hearing is found at App. A-6. None of the aforesaid decisions are reported.

(Footnote continued from page 1)

cases establish that an order of a reviewing court declining to hear a case is not ordinarily the "judgment" which is reviewable under § 1257. Neither the summary denial of the Writ of Mandate by the California Court of Appeal herein (App. A-5) nor the summary refusal to grant a hearing by the Supreme Court of California (App. A-6) appears to have constituted an affirmance or judgment going to the substance of Petitioner's jurisdictional defense. However, in the event this Court should deem the action of the California Court of Appeal or of the Supreme Court of California as the proper subject of instant review, Petitioner asks that this Petition be read, in the alternative, as a request that the Writ issue to each such reviewing court.

JURISDICTION

The Minute Order decision of Hon. Ross G. Tharp, Judge of the Superior Court of the State of California for the County of San Diego was entered on March 20, 1978. The order of the California Court of Appeal denying GCFA's Petition for Writ of Mandate was entered on June 27, 1978. The order of the Supreme Court of California denying GCFA's Petition for Hearing was entered on July 27, 1978. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(3).[2]

QUESTIONS PRESENTED

1. Does the First Amendment permit the California Court, in assessing the functions and activities of a non-resident unit of an international religious denomination for purposes of *in personam* jurisdiction, to reject that church body's presentation of its religious polity and role as set forth in *The Book of Discipline*[3] of such denomination and

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[2] The finality requirement of 28 U.S.C. § 1257 is supplied by the California special appearance procedure which Petitioner was required to follow in order to object to the court's assertion of *in personam* jurisdiction. That procedure, set forth in California Code of Civil Procedure § 418.10, accords a defendant no opportunity to answer or defend on the merits while saving its jurisdictional defense for subsequent appeal. Under settled California law, such action would constitute an irrevocable submission to the court's jurisdiction. *McCorkle* v. *City of Los Angeles*, 70 Cal.2d 252, 257-258 (1969). Thus, since GCFA must proceed on a pretrial basis to exhaust its remedies if it is to have any meaningful review at all, the finality standards set forth by this court in *Shaffer* v. *Heitner*, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683, 692 at n.12 apply.

[3] *The Book of Discipline* contains the constitution and basic legislation of United Methodism and constitutes the pronouncement of the highest authority or judicatory in the denomination. It is the evolution of almost 200 years of church law and it predates any civil law controversy involved in the instant case.

in the uncontradicted sworn testimony of church officials and experts, while adopting, and basing jurisdiction upon, a contrary version of such polity ascribing to the defendant vast powers and responsibilities in California and elsewhere which it does not possess, where such deviant version was urged upon the court in arguments by strangers to the denomination unaided by expert testimony or other competent evidence?

2. To the extent the court based its jurisdictional decision on unspecified factors in addition to its interpretation of religious polity considerations cited in the Minute Order, do the First and Fourteenth Amendments permit California to assert *in personam* jurisdiction over a non resident religious body which has had no relationship or contact whatever with the plaintiffs or the cause of action in California or elsewhere, and whose non-commercial missional activities have touched California only remotely and sporadically, primarily in the form of its passive receipt in Illinois, for allocation to other religious bodies, of certain world mission and benevolence funds voluntarily donated by members of the denomination who incidentally reside in California?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . ."

U.S. Constitution, Amendment XIV, Sec. 1:

". . . nor shall any state deprive any person of life, liberty or property, without due process of law. . ."

STATEMENT OF THE CASE

This is a case in which the trial judge chose to base his determination of *in personam* jurisdiction on his interpretation of basic church documents forming the ecclesiastical law of the United Methodist denomination. In so doing, he ignored the basic polity of the denomination and the role of Petitioner, GCFA. Further, his decision was uninformed by any expert testimony such as that produced in abundance by GCFA in conjunction with the *The Book of Discipline*. It is submitted that such an approach to determining judisdiction violated First Amendment principles as hereinafter shown.

A. Background of the Proceeding.

Petitioner, GCFA is one of several defendants named in the action now pending in the Superior Court for the County of San Diego entitled *Frank T. Barr, et. al.* v. *The United Methodist Church, et al,* (Cause No. 404611) which sought, *inter alia,* damages in the amount of $366 million; now, by amendment, such damages as may be established.

The action arises out of the financial failure of Pacific Homes, a California not-for-profit corporation, which operated 14 facilities for the care of the aged and which, for many years, had been related to the Pacific and Southwest Annual Conference of The United Methodist Church (hereinafter "PSWAC"), a co-defendant in the action which is likewise a California not-for-profit corporation.[4] In Febru-

[4] The United Methodist Church (hereinafter called "UMC") is an international religious denomination and movement of 10 million members. It is a non-authoritarian confederation of many thousands of local churches, boards and conferences which exercise substantial autonomy in carrying out their respective ministries. UMC's polity is often referred to as "connectional." Annual Conferences are the fundamental constitutional units of United Methodism operating within prescribed geographical areas in this country and abroad. California lies within two annual conferences, one of which is PSWAC. A provision of long standing in *The Book of Discipline* is as follows:

> "An annual conference cannot financially obligate The United Methodist Church or an organizational unit thereof except the annual conference itself." (Par. 702.2)

ary 1977, Pacific Homes petitioned for relief under Chapter XI of the Bankruptcy Act.[5] The Pacific Homes corporation itself is protected by its pending reorganization proceeding and has not been made a party herein.

The uncertain financial condition of Pacific Homes placed the viability of certain "lifetime care contracts" of its residents in doubt and resulted in the initiation of this action in September, 1977, by some 150 residents of Pacific Homes ("Real Parties in Interest" herein), purportedly on behalf of its 1,900 residents, seeking either specific performance of the contracts with Pacific Homes or, alternatively, damages allegedly caused by non performance. The initially named church defendants were PSWAC and UMC.[6] In December, 1977, plaintiff filed their first Amended Complaint, naming for the first time Petitioner GCFA. GCFA appeared specially and filed its motion to quash service for lack of *in personam* jurisdiction which is the subject of instant review.

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[5] Subsequently, the proceeding was converted to a Chapter X reorganization and the Homes have been operated by a court appointed trustee. To date, there has been no interruption in services to the elderly in these homes nor is any such interruption imminent since cash flow imbalances have been stabilized with some success. Special funds have also been provided by concerned church members and other donors to meet individual hardship cases, should any arise among the residents.

[6] This effort to sue an entire international religious system and require it to answer, as a single jural entity or "unincorporated association," for the alleged acts or omissions of a local institution said to bear a denominational relationship is without precedent in Anglo-American jurisprudence. Further, there has been a proliferation of the litigation with the filing of two additional suits by related interests against the same church defendants for $5 million and $50 million, respectively.

B. The Nature and Functions of GCFA.

GCFA is one of 13 religious units situated at the so-called "general level" of The United Methodist denomination.[7] Its functions, which are described in *The Book of Discipline* of UMC, are essentially three-fold. First, and most important, GCFA is a conduit through which approximately 5½ cents out of each dollar of United Methodist donations received in local churches (sometimes referred to broadly as "'general church funds") are funneled to other general level church agencies according to predetermined budgets for foreign and home missions, higher education, evangelism, hunger alleviation and relief programs. The remaining 94½ cents out of each donated dollar remains at the local level for church operating expenses and annual conference benevolences. GCFA periodically forwards General Conference-proposed askings or "apportionments" to annual conferences for these "general" level financial needs which in turn, are communicated by the annual conferences to the 43,000 local churches. Under UMC polity, these apportionments have no greater force than a recommendation and the local churches can (and sometimes do) decline to subscribe. Those churches which elect to give their support send such funds to their local annual conferences, the treasurers of which, in turn, forward checks to

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[7] Essentially, UMC functions on four distinct levels: local (43,000 churches in this country and abroad), annual conference (114 annual conferences), jurisdictional (5 jurisdictional conferences covering defined geographical areas) and "general". "General" is a term of art in the United Methodist lexicon which does not denote hierarchial oversight. Rather, the "general level" is descriptive of a defined group of agencies, operations and programs functioning in relationship to UMC's General Conference, a body of clergy and laymen representing the annual conferences, which meets and legislates for the denomination once every four years. Unlike Methodist entities at the non-general levels of UMC, the mission of general level agencies is without geographical restriction. The United Methodist denomination is not incorporated, it has no headquarters, no head person and no central management.

GCFA for further handling and transmittal to sister general level agencies.

A second function of GCFA is to provide certain fiscal, accounting and property management services, sometimes called "central treasury services," for eight of its twelve sister agencies at the general level of the church. These services are confined to only a minute segment of the thousands of units comprising the denomination and have no application to the 43,000 local churches, the annual conferences or other UMC related institutions, such as homes or hospitals. All eight general level units which do receive such services are located outside of California and have no offices or properties there. Third, GCFA seeks to promote administrative efficiencies and bring to the attention of church units opportunities for economies of scale by offering certain elective programs and services (i e., computer time sharing, group insurance opportunities, biennial informational workshops and administration of a group tax exemption ruling secured from the Internal Revenue Service). No United Methodist entity must avail itself of these voluntary services.[8] In the last decade, two biennial workshops are known to have taken place in California.

Most of GCFA's work, prescribed as its particular mission by *The Book of Discipline,* is done in its offices in

[8] Other miscellaneous services of GCFA include administration in Illinois of an "Episcopal Fund" which is a source of support for active and retired bishops, remittance of salaries and expenses to active UMC bishops wherever located (there are two such bishops in California), compilation of statistical data and design of budgetary and financial forms to facilitate efficient record keeping by local units of UMC. GCFA is not a policy maker, nor does it have any legislative or judicial powers. It has no meaningful discretion in its conduit role to withhold, divert or reduce budgeted funds destined for recipient agencies. Only UMC's General Conference, which meets for approximately two weeks, each quadrennium, may speak for the UMC. Even that body's powers are limited under *The Book of Discipline.*

Evanston, Illinois, where a staff or 18 persons is employed. On infrequent occasions, one or more staff members of GCFA have visited other states, including California, in connection with GCFA's biennial workshops, or in offering consultive assistance in areas within its expertise, such as the stewardship of church funds, the use of computer time sharing and the like. However, under *The Book of Discipline,* GCFA has no control whatever over individual United Methodists, local churches, annual conferences, annual conference institutions such as homes and hospitals, or jurisdictional conferences. In fact, its orbit of activities is largely confined to a handful of sister agencies at UMC's general level, all of which are located outside of California. Such activities rarely entail any contacts with local churches and never involve homes or hospitals. These are not commercial activities but are all related to the religious mission of GCFA.

C. GCFA's Non-Involvement in the Cause of Action and Lack of Presence in California.

The uncontradicted evidence shows that GCFA has no office in California. It has no employees in California. It neither owns nor leases property located in that state. It has no telephone listing or banking account in California and employs no agent there for any purpose.

The uncontradicted evidence also shows that GCFA has never had any involvement in the formation, management, operation or financing of Pacific Homes; in fact, it has had no relationship of *any* kind with the Homes, the plaintiffs, or the cause of action. As best can be determined from the pleadings, the theory of action against GCFA is one of derivative or indirect liability resting on a purported "agency" or "alter ego" relationship between it and Pacific Homes which arises through GCFA's alleged "control" within UMC polity and by virtue of both entities being United Methodist related.

D. Evidentiary Presentations Concerning UMC Polity and the Scope of GCFA's Activities.

During the jurisdictional proceedings in the Superior Court, GCFA introduced *The Book of Discipline* as well as the expert affidavit testimony of three United Methodist bishops, the General Secretary of GCFA, and that of a leading scholar of United Methodism who is a professor emeritus from Garrett-Evangelical Seminary, a theological school associated with Northwestern University. This expert testimony which included GCFA's limited role in the denomination, its lack of domination or control and its highly limited and remote missional relationships with California, was uncontradicted by any counter-affidavits or expert witnesses on behalf of plaintiffs.

At the hearing, plaintiffs' counsel relied upon a mass of discovery material never actually offered in evidence. In addition, they placed before the judge a large, self-constructed chart which purported to explain the United Methodist polity and the functions and activities of GCFA therein. The chart which proved to be influential with the Court, erroneously portrayed GCFA as the nerve center of United Methodism and depicted, in military chain of command fashion, purported relationships, regimentation and lines of authority which do not exist in UMC's polity. Use of the raw discovery materials and chart, without foundation therefor, was objected to by GCFA but was never ruled upon by the trial judge. Among Plaintiffs' erroneous arguments and intimations, which had persuasive effect with the Court, were these: 1) GCFA's functions and power pervade the whole denomination; 2) it actively "gathers" funds in California; 3) local church units in California are commanded to remit funds to GCFA and have no discretion to withhold them; 4) GCFA controls the terms of employment relationships carried out in California; and 5) GCFA controls real estate in California.

E. The Assailed Minute Order.

On March 20, 1978, Judge Tharp issued his Minute Order dismissing UMC as a party defendant[9] but denying GCFA's motion to quash. App. A-2. Instead of addressing minimal contact considerations under *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945), he gave the following principal reasons for asserting jurisdiction over GCFA, many of which can be traced to plaintiffs' chart:

—"According to the Methodist "Book of Discipline' the GCFA operates as 'the central treasury and fiscal agent of The United Methodist Church'."

—"It [GCFA] 'provides property, investment and management functions for the *general church*'."

—"The GCFA has responsibility to 'receive, collect, and hold in trust for the benefit of The United Methodist Church, its general funds (and) any and all donations, bequests and devises of any kind . . . that may be given . . . to The United Methodist Church'."

—"In 1976, the GCFA received and *controlled* over $60 million. Many millions thereof were *collected* in Methodist churches in California and forwarded to the head office of the corporation in the State of Illinois."

—"Local church officials have *no discretion* to retain funds collected in California for local use; it is *mandatory* that all funds be remitted to Illinois."

—"In brief, *GCFA controls the purse strings of The United Methodist Church and dominates all church activities in the nation.* The GCFA controls the income, pensions and insurance programs of thousands of per-

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[9] The dismissal of UMC on the ground that it is a non-jural confederation, and not a separately suable "unincorporated association" is now pending appeal by plaintiffs to the California Court of Appeal. That separate issue, while addressed in the opening portion of the same Minute Order, is not involved in the instant Petition for Writ of Certiorari.

sons and controls the purchase, sale and financing of millions of dollars of real property throughout the United States, *including California.*"

"It [GCFA] is, therefore, 'doing business' in the State of California and the County of San Diego."

(Italics added in above quoted material)

The attached Tabulation of Minute Order Errors with citations of contradictory authority from *The Book of Discipline* and/or experts in the United Methodist ecclesiastical law (App. A-7) shows that each of the foregoing statements of the Court was a gross misdescription of United Methodist polity and of GCFA's role therein, having been made in reliance on the arguments of Plaintiffs' counsel. It was these fundamental polity distortions implying GCFA dominion over church units in California, and no other discernible reason,[10] which led to the Court's conclusion

[10] A further action of Judge Tharp reflects adversely upon the reliability of his decision vis a vis GCFA. The Judge accompanied his Minute Order with a letter to counsel dated March 20, 1978 (App. A-3) which he filed with the Clerk of the Superior Court. This letter soon became the subject of extensive prejudicial newspaper publicity. Included in such letter were the following observations concerning the Court's conception of GCFA:

"I believe that plaintiff will prevail against GCFA on the alter ego theory in view of the GCFA's complete domination and control of the conference. Further, I believe the award of damages will be enormous."

• • •

"At least one of the defendants [referring to GCFA] is well able to respond in damages and the likelihood of the plaintiffs receiving a very sizable judgment within the next few months bears heavily in their favor."

• • •

"The defendants . . . should consider offering some of their abundant means to help resolve this problem"

App. A-3, 4.

(Footnote continued on page 13)

that "[GCFA] is, *therefore,* 'doing business' in the State of California and the County of San Diego." (italics added)

A few days after issuing the opinion on Judge Tharp's prejudice toward GCFA, described herein in footnote 10, the same Court of Appeal nevertheless entered its summary order denying GCFA's Petition for Writ of Mandate to correct Judge Tharp's jurisdictional ruling against it.

REASONS FOR GRANTING THE WRIT

I. Introduction.

This case adds unique and important First Amendment dimensions to the area of extraterritorial jurisdiction as developed by this Court in its line of decisions following *Pennoyer* v. *Neff,* 95 U.S. 714 (1878). With the exception of one very recent decision of the United States Court of Appeals for the Fifth Circuit[11] involving dissimilar facts, no case appears to have dealt with the amenability of religious bodies to suits in distant forums; nor have any standards been articulated for the application to churches of due process principles which heretofore have evolved in

(Footnote continued from page 12)

At the time of the release of this letter, GCFA had not generally appeared or answered in the case; nor could it have addressed itself in any way to the merits without surrendering its special appearance status. In an opinion filed June 23, 1978, (not involved in the instant petition) the California Court of Appeal concluded that the letter in question demonstrated a bias and prejudice which disqualified Judge Tharp from conducting any further hearings in the underlying action. In referring to the Judge's orientation toward the church defendants, including GCFA, the court of Appeal likened the Judge's letter to picking a winner when "the horses were not yet out of the paddock." *Pacific and Southwest Annual Conference of the United Methodist Church* v. *Superior Court, etc.* ____ Cal. App. 3d ____, (4 Civ. No. 18181, 4th Appellate Dist. 1978) Slip Opinion at 17.

[11] *Barnstone* v. *Congregation Am Echad,* ____ F.2d ____, Cause No. 78-1054 (5th Cir., 1978).

a largely commercial context. To this is added in the instant case a judicial rewriting of a religious polity, raising more First Amendment concerns.

Given the recent events in California, it is reasonable to expect that our international religious systems and their major boards and agencies will emerge increasingly as targets of litigation in distant forums, where, as here, the alleged acts or omissions had their inception in a peculiarly local setting, like a parish church, a home, college, hospital or other institution bearing a denominational name. All religious denominations with large followings have adherents throughout the several states and conduct ministries and missional activities of various kinds spanning large geographical areas. But do these activities, whether they be the conduct of worship or more temporal aspects of church operations, equate with commercial enterprise or availment of a state's benefits? If so, the result would be tantamount to conferring nationwide jurisdiction over such major religious bodies, to a degree not seen with even the largest commercial corporations. Such a development could only have a chilling effect on the free conduct of religious activities. The case is ripe for this Court's consideration.

II. The Superior Court's Interpretation, by Altering and Rewriting UMC's Basic Law and Polity, Offends the "Establishment" and "Free Exercise" Provisions of the Constitution.

By adopting the inaccurate arguments and charts of Plaintiffs' counsel, portions of which the Court mistakenly understood, contrary to fact, as having their source in *The Book of Discipline*, the Minute Order ascribed to GCFA vast powers and responsibilities in California and elsewhere which it simply does not possess. (Tabulation of Minute Order Errors at App. A-7). This Court's decision in *Serbian Eastern Orthodox Diocese for the United States of America and Canada* v. *Milivojevich*, 426 U.S. 696 (1976) makes it clear that the First Amendment is offended if, in

the process of interpreting church law, a court questions, distorts or delves too deeply beneath the surface of a church's own pronouncements on polity contained in "neutral" instruments such as its constitution or by-laws:

> "(W)here resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them." 426 U.S. at 709 (citations omitted).

Manifestly, it was not for the Superior Court to "pick and choose" between two competing versions of the GCFA role in United Methodist polity, substituting its own judgment for the contrary statements of Petitioner's uncontradicted experts and basing its assertion of jurisdiction on plaintiff's version. Cf.*Serbian Diocese, supra,* at 426 U.S. 718-719. This is not to say that any views of the United Methodist polity which differ from the GCFA's are inadmissible; however, minimal judical adherence to the First Amendment and to *Serbian Diocese* would seem to dictate that contrary interpretations must take the form of competent, substantial and qualified expert testimony rather than that of hearsay discovery material submitted in bulk and of self-serving lawyers' charts and interpretations.

Thus, the principal vice of the Minute Order decision is that it is structured around an impermissible judicial reordering of United Methodist polity. This defect is compounded by the present uncertainty as to what constituted the evidentiary record before said court. There is no indication that *any* evidence was properly offered and received to rebut GCFA's expert evidentiary submission. The defect is further compounded by the likelihood of error grow-

ing from prejudice as expressly found by the same Court of Appeal which permitted the decision challenged herein to stand. As a minimal matter, the Writ should issue as a prelude to a remand to the Superior Court for reconsideration of the jurisdictional questions within a proper factual framework. This would at the very least include a proper assessment of United Methodist polity and correct evidentiary procedures which do not leave in question the nature of the record upon which the court is ruling.

The Tabulation attached at App. A-7 fully documents the respects in which the entire Minute Order is flawed by a serious misunderstanding of Petitioner GCFA's function. Each and every one of the Court's jurisdictional "reasons" cited therein is materially defective. These are not routine or technical errors which might be dismissed as mere surplusage. Instead, in a violative manner these errors by judicial fiat alter the polity and inter-relationships among agencies within the United Methodist connection, and implicate serious constitutional questions of religious freedom. Such judicial alterations of an established religion, in total disregard of its own charter, if permitted to persist, would effectively put an end not only to the unique "connectionalism" of United Methodism, but would endanger the integrity of other organized religions as well. It is no answer to say that the infringement is only incidental to the resolution of jurisdictional questions, for it was at the heart of the Court's decisional process as shown by the Minute Order.

The federal constitutional guarantee of religious freedom has been well summarized in *Walz* v. *Tax Commission,* 397 U.S. 664 (1970) where this Court said:

> "The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally-established religion or governmental interference with religion." 397 U.S. at 669.

Although the prohibition against interference in internal church law and polity has developed largely in the context of church schisms and property disputes, the rule that courts will not interfere with such internal law, polity or goverance is so familiar and deeply engrained in our system as to require little elaboration. The doctrine of judicial respect for church law received early recognition in *Watson* v. *Jones,* 13 Wall 679 (1871) in which this Court, faced with a schism of pro and anti-slavery groups within the Presbyterian church, laid down principles of judicial restraint and primacy of ecclesiastical law in resolving factional disputes. Many decades later, in *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church in North America,* 344 U.S. 94 (1952) this Court adverted to the principles of *Watson* v. *Jones:*

> "The opinion [in *Watson*] radiates . . . a spirit of freedom for religious organizations, and independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, *matters of church government as well as those of faith and doctrine.*" 344 U.S. at 116 (emphasis added.)

Thus, the "hands off" policy of the Establishment Clause is not limited merely to property disputes and doctrinal questions; it is equally applicable to issues of goverance and of administration within a church. In *Serbian Diocese, supra,* this Court was faced with an attempt by the Illinois Supreme Court to construe the religious constitution of the Serbian Church so as to determine the allocation of power and authority within said church. Noting that the First Amendment commands civil courts to resolve property disputes without intruding into the area of religious doctrine, this Court added:

> "This principle applies with equal force to church disputes over church polity and church administration." 426 U.S. at 710.

The teaching of these cases in the present setting is that the Superior Court was legally bound to determine GCFA's place in the polity of United Methodism by recourse to the "neutral principles" set forth in *The Book of Discipline* and as interpreted and amplified by respected experts in matters of church law. Unfortunately, that Court consulted the wrong oracle and placed its reliance upon Plaintiffs' self-serving version of the polity, brought forth without the assistance of expert counter testimony and without recourse to elementary principles of evidentiary procedure. Manifestly, it was not the province of the Superior Court to confer upon Petitioner GCFA powers and attributes which it palpably does not possess.

III. Even Assuming The Court's Jurisdictional Ruling Was Made With Reference to Unspecified "Evidence" of GCFA's Sporadic Activities in California, No Due Process Basis Exists for Such Action.

Assuming, *arguendo,* that plaintiffs' bulk submission of thousands of pages of unauthenticated discovery material constituted competent evidence and that the court relied, without so stating, on such "evidence" the decision, nevertheless, should be reviewed. It gives rise to important due process[12] and religious freedom issues concerning the pro-

[12] A separate due process problem is that GCFA is confronted with a "Hobson's Choice" now that has exhausted its remedies in the California courts, due to the lack of any statutory provision for a stay of proceedings pending further review efforts by a specially appearing defendant. California Code of Civil Procedure at § 418.10 provides for deferral of pleading by defendants seeking state appellate review under California's Writ of Mandate procedure, but specifically denies the trial court any discretion to grant an extension beyond the thirtieth day after final disposition by the California Supreme Court. Moreover, the review afforded Petitioner herein can scarcely be equated with normal post-judgment appellate review, since it depends on a narrow, truncated and seldom granted statutory writ procedure. In the instant case,

(Footnote continued on page 19)

priety of applying the usual analysis governing commercial and business minimal contacts under "long arm" statutes when, as here, the most that can be shown are *limited missional and ecclesiastical activities of a non resident religious organization totally unrelated to the cause of action.* There is a total absence of any nexus between GCFA and the alleged causes of action because GCFA was never even remotely involved in the affairs of Pacific Homes. We will show below that GCFA's role in Illinois as a conduit, to receive and distribute a small part (on the average, around 5½ cents) of each United Methodist benevolence dollar voluntarily donated by worshippers in California and elsewhere, is essentially passive and does not have the purposeful, commercial aspect which would add up to a meaningful affiliation with California under the teachings of *Kulko* v. *Superior Court,* —— U.S. ——, 98 S.Ct. 1690 (1978).

Moreover, even under straight minimal contacts analysis which has developed primarily in the commercial setting, GCFA's casual and intermittent activities touching California do not amount to an extensive, systematic or widespread involvement with that state or a purposeful availment of benefits as contemplated in *Hanson* v. *Denckla,* 357 U.S. 235 (1958).

(Footnote continued from page 18)

the Superior Court for the County of San Diego noted its lack of statutory authority to grant such a stay in its order of August 3, 1978 (App. A-18) denying Petitioner's application for stay pending this court's disposition of GCFA's Petition for Writ of Certiorari. Petitioner's answer or other pleading is due by August 28, 1978. GCFA's current alternatives are these: (1) to timely answer the complaint thereby waiving its jurisdictional defenses and submitting to the court's jurisdiction for all purposes; or (2) to persist in its effort to secure the instant review at the risk of sustaining a multi-million dollar default judgment. Accordingly, GCFA has made an application to Mr. Justice Rehnquist, as Circuit Justice, for a stay pending disposition of this Petition, which is being filed concurrently herewith.

The federal constitutional "commercial" standard for evaluating a non-resident defendant's affiliation with a forum, with its emphasis upon availment of benefits was stated by this Court in *Hanson* v. *Denckla, supra,* as follows:

> ". . . it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." 357 U.S. at 253.

Where, as here, there is a total absence of forum related activity tied to the cause of action, yet another element is required: the defendant's activity in the forum must also be systematic and substantial. Thus, in *Republic International Corporation* v. *Amco Engineers, Inc.* 516 F.2d 161 (9th Cir. 1975) the Court stated the federal constitutional test thusly, quoting with approval from a California Supreme Court decision:

> "'[U]nless the defendant's forum-related activity reaches such *extensive or wide-ranging proportions* as to make the defendant sufficiently 'present' in the forum state to support jurisdiction over it concerning causes of action which are unrelated to that activity, the particular cause of action must arise out of or be connected with the defendant's forum-related activity.' *Buckeye Boiler Co.* v. *Superior Court,* 71 Cal.2d 893, 898-899, (1969)." 516 F.2d at 167. (italics added.)

Thus, in dealing with a non-resident defendant whose limited affiliation with the forum is unrelated to the cause of action (indeed, in the present case there is no nexus between GCFA and plaintiff's cause of action *anywhere*) jurisdiction depends on a forum-related activity which is: (1) of a quality which involves the purposeful availment of privileges in the forum state, "invoking the benefits and protections of its laws"; and (2) "extensive or wide-ranging." Even putting First Amendment considerations aside, GCFA's intermittent and casual encounters with California do not meet these tests. We now review briefly what a proper evidentiary record would show about the principal activities of GCFA which have any conceivable relationship to California.

A. *GCFA's Administration Of "World Service" Benevolence and Other General Level Funds And Isolated Bequests, To The Extent They Originate In The State Of California, Cannot Subject It To Jurisdiction.*

The primary function of GCFA is to act as a conduit for general-level support monies (for example "World Service" monies) donated in local churches throughout the denomination and comprising about 5½% of total givings. Seeking to equate this religious and non-discretionary role of GCFA with the activities of a commercial enterprise, Plaintiffs in their arguments to the Superior Court, placed heavy reliance upon GCFA's administration of the portion of these benevolences which originated in California. They suggested, misleadingly, that GCFA actively solicits funds in California and acts as a "collector" of monies, almost as if it directed a network of collection agents or revenue gatherers in California. In reality, however, GCFA's receipt of these monies can in no way be likened to revenues obtained through affirmative "collection" techniques or the sales efforts of a commercial enterprise.

Reference to UMC polity is, once again, in order. When individual worshippers, through their local churches, *voluntarily* elect to earmark a portion of their givings for causes like World Service, GCFA becomes a facility for receiving and redistributing those earmarked funds which come to it in Illinois via the treasurers of the two Annual Conferences in California. GCFA's administration of these monies cannot realistically be described as its receipt of a

"financial benefit" in the usual sense because it acts only as an Illinois fiduciary in handling monies which will ultimately benefit those who are the objects of the various education, relief and missionary programs of the denomination. The lack of purposeful activity for personal or commercial gain is a factor negating extraterritorial jurisdiction as recognized by this Court in *Kulko, supra.* There, it was noted as follows:

> "The cause of action herein asserted arises, not from the defendant's *commercial* transactions in interstate commerce but rather from his personal, domestic relations. It thus cannot be said that appellant has sought a *commercial* benefit from solicitation of business from a resident of California that would reasonably render him liable to suit in state court . . ." (italics added) 98 S.Ct. 1698.

Nor can GCFA's function be said to represent a purposeful availment "of the privilege of conducting activities within [California], thus invoking the benefits and protections of its laws." *Hanson* v. *Denckla, supra.* Indeed, the process by which receipt is made of this mere fraction of the total givings in all local churches in California is a matter within the exclusive province of ecclesiastical law and the internal polity of UMC. Its transmission is subject to the decisions of the donor local churches which may give or withhold their contributions to World Service as they please. Under that ecclesiastical law, it is difficult to see how GCFA could seek "the benefits and protections" of the laws of California in connection with such funds. California's judiciary is, in fact, constitutionally proscribed from attempting to apply its laws to these exclusively ecclesiastical concerns. *Kedroff* v. *St. Nicholas Cathedral of The Russian Orthodox Church in North America, supra.* There is no evidence of any attempt *ever* by GCFA to invoke California law in connection with these World Service and related funds.

The same considerations apply with respect to isolated bequests made by California decedents to further the work

of the denomination at its general level, thereby involving GCFA, in Illinois, as a fiduciary recipient and administrator of such estate proceeds. In the last decade, only two such bequests to the larger denomination are known to have been made, resulting in the transmission of estate proceeds to GCFA. In no case did GCFA solicit or even know of the planning of such benefactions.

B. *GCFA's Payment Of Bishops' Salaries And Funding Of Their Pensions Will Not Suffice To Subject GCFA To California Jurisdiction.*

In the course of its administration of the Episcopal Fund, GCFA forwards monthly checks covering salaries, office expenses and travel reimbursements for the two active United Methodist bishops who reside in California. GCFA is vested with no discretion with respect to its stewardship of the Episcopal Fund. That fund, like all other funds administered by GCFA, exists only because individual United Methodists have voluntarily earmarked a portion of their local givings to support the religious mission of the United Methodist episopacy.

This Court's decision in *Hanson* v. *Denckla, supra,* is instructive on this issue as well. There, a dispute arose between the legatees of a will and the beneficiaries of a trust regarding ownership of some $400,000 of trust corpus located in the State of Delaware. An action was commenced in the State of Florida by the legatees under the will but the Delaware trustee failed to appear. The principal question presented was whether the Delaware trustee was subject to the jurisdiction of the Florida courts by reason of its payment of earnings from the trust corpus into the State of Florida. This Court held that no jurisdiction existed, emphasizing that no relationship existed between the cause of action asserted and the trustee's relationship with Florida.

It is, therefore, clear that GCFA's fiduciary service in paying bishops' salaries and expenses from a fund having

its situs in Illinois is not sufficient to subject it to California jurisdiction.

C. *The California Residences Of Four Members Of The Board Of Directors Of GCFA Are Of No Jurisdictional Import.*

The "council" referred to in the corporate name of GCFA is made up of 42 individuals throughout the nation. They are the board of directors of GCFA and normally meet annually to review matters of concern in the religious enterprise undertaken by GCFA. Certain members of this board of directors are also members of an Executive Committee of the Council which also meets annually and, infrequently, on special call.

Four of the individuals who serve as members of the board of directors of GCFA have chosen to reside in California. It cannot be meritoriously asserted that *in personam* jurisdiction extends to the separate and distinct corporate entity of GCFA by reason of such individual choices of residence. Plaintiffs cited no authority below to support this assertion which completely ignores the established bases for determination of the reasonableness of the exercise of jurisdiction. The individual choice of a member of a corporation's board of directors to place his personal residence in California does not indicate, in any way, the corporation's intent to "purposefully avail itself" of the benefits and protections of the laws of California for all purposes. The members of the board of directors of GCFA reside in California *in spite of, not because of,* their relationship with GCFA. Their individual choices of residence are entitled to absolutely no weight in considering GCFA's presence in said state, for, as this Court has observed in *Hanson* v. *Denckla, supra,*

> "The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state."
>
> 357 U.S. at 253

D. *GCFA's Sponsorship Of Biennial Jurisdictional Workshops And Its Offering Of Cost Saving Programs And Consultation To Individual Church Units Does Not Constitute Presence In California.*

Every two years, staff members from GCFA conduct "Jurisdictional Workshops" which provide a forum for local church administrators to meet, if they wish, with staff members of GCFA and informally discuss techniques helpful to the smooth administration of their individual churches or Annual Conferences. For a few days in 1974 and in 1976, the Western Jurisdictional Workshop, sponsored by GCFA, was conducted in California.

Plaintiffs argued below that such workshops indicate "substantial, continuous and systematic" presence in California. It is clear, however, that exactly the opposite is true. When members of the staff of GCFA attended Western Jurisdictional Workshops, only once every two years, they were in California as visitors. They issued no directives to United Methodist administrators. They are not empowered to do so. They were merely carrying out their advisory function as described in *The Book of Discipline.*

Similarly, GCFA's limited efforts to arrange programs, such as group insurance and computer time sharing and an understanding of the IRS group exemption ruling, whereby individual Methodist churches throughout the denomination can realize efficiencies and savings in the daily administration of their religious missions, does not represent GCFA's "presence" in every state wherein a United Methodist church is located. From its offices in Evanston, Illinois, it merely coordinates the above-mentioned programs. Individual United Methodist churches can independently decide whether they wish to participate in those cost saving programs. In arranging for these programs, with short, infrequent visits to California, it cannot be validly asserted that GCFA makes any attempt to "purposefully avail itself" of the protections of the laws of the forum.

IV. Constitutional Notions of Fairness Require a Showing of Some Relationship Between GCFA's Activities Within the State of California and the Causes of Action Asserted Against It; Here, No "Nexus" Exists Inside or Outside of California.

The established commercial test for whether a foreign corporation is "present" in a state for purposes of the exercise of jurisdiction is not easily applied to GCFA. As we have shown, its occasional contacts in California are not commercial. No goods are sold. None are purchased. No written contracts are negotiated or entered into. No directives are issued. The fact that the missional activities of GCFA are largely fiscal in no degree justifies treatment of GCFA, a religious unit, as though it were a commercial enterprise or a business unit.

But there is a further aspect of this case which makes it unique and distinguishes it from the reported jurisdictional decisions. That is the complete absence of a showing of any relationship between GCFA and the causes of action *not only in California but elsewhere.* All decisions with which we are familiar in the *International Shoe* line of cases presuppose *some* nexus *somewhere* tying the defendant to the cause of action; the only question in such cases is whether the nexus is found in the forum, and if not, whether the defendant is sufficiently "present" to satisfy due process.

The Plaintiffs have neither attempted to link the cause of action which arose in California with GCFA's activities in that forum nor have the plaintiffs made even a colorable showing to link GCFA's activities with elements of the cause of action, if any, which may have arisen in any other forum. There thus remains a missing link in plaintiffs' attempt to establish that it would be fundamentally fair to require GCFA, a distant, Illinois non-profit corporation, to continue to expend considerable resources in defense of the subject action. It is respectfully submitted that in the absence of

such a showing, the plaintiffs have offended due process doctrines of fairness and have failed to carry their burden of proof in establishing jurisdiction over GCFA. Any such attempted exercise of long arm jurisdiction, in the circumstances, necessarily has a chilling effect on the free exercise of religion contrary to the First Amendment.

In this posture of the case, Plaintiffs' efforts to subject GCFA to burdensome participation in distant litigation cannot be more appropriately characterized than by the language of Judge Pollack in *Keene Corporation* v. *Weber,* 394 F.Supp. 787, 789 (S.D.—N.Y., 1975) where he observed:

> "[Plaintiffs'] invocation of nationwide service of process was based upon gossamer and contrived allegations of "participation" by [defendant]. This case is indicative of an unfortunate tendency, which has become all too prevalent, to proceed on speculative assumptions in the absence of a sound factual foundation . . . *for the supposed in terrorem effect thereof due to the potentially coercive impact of such a suit . . . .* " [motion to dismiss for lack of jurisdiction granted].

CONCLUSION

The United States Supreme Court should issue the Writ of Certiorari prayed for by Petitioners.

Dated this 22nd day of August, 1978.

Respectfully submitted,

SAMUEL W. WITWER
JOHN H. L'ESTRANGE, JR.
SAMUEL W. WITWER, JR.
DANIEL R. SALAS
ROBERT V. VALLANDIGHAM, JR.
FRANK J. CASEY

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APPENDIX

Minute Order Decision

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

FRANK T. BARR, et al., Plaintiffs, vs. THE UNITED METHODIST CHURCH, et al., Defendants.	No. 404611 MINUTE ORDER

THE UNITED METHODIST CHURCH

The "United Methodist Church" is an international religious denomination consisting of over 10,000,000 persons who worship in some 43,000 churches and missions throughout the world. The "United Methodist Church" is a "connectional" structure maintained through a chain and series of periodic conferences. It has never been incorporated.

A respected unbiased source, "The Encyclopedia Britannica", 1959 Ed., Vol. 15, p. 358, states: "Methodism has continued for more than two centuries to proclaim a freedom of spirit as opposed to the bondage of an organization, and its appeal has been based on the reality of a personal experience of spiritual emancipation through faith in Christ."

The Court rules that : "The United Methodist Church" is no more than a "spiritual conferedation" and is not a jural entity or unincorporated association subject to suit under Code of Civil Procedure 388. A contrary ruling would effectively destroy Methodism in this country, and would have a chilling effect on all churches and religious movements by inhibiting the free association of persons of similar religious beliefs. If all members of a particular faith were to be held personally liable for the transgressions of their fellow churchmen, church pews would soon be empty and the pulpits of America silent.

Accordingly, the motion to quash service of process on "The United Methodist Church" is granted.

THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION

The "General Council on Finance and Administration", hereafter referred to as GCFA, is an Illinois corporation. According to the Methodist "Book of Discipline", the GCFA operates as "the central treasury and fiscal agent of the United Methodist Church." It "provides property, investment and management functions for the general church." The GCFA is accountable to the General Conference of the United Methodist Church in all matters relating to the receiving, disbursing and reporting of general church funds. The GCFA has the responsibility to "receive, collect, and hold in trust for the benefit of the United Methodist Church, its general funds (and) any and all donations, bequests, and devises of any kind . . . that may be given . . . to The United Methodist Church." In 1976, the GCFA received and controlled over $60,000,000.00. Many millions thereof were collected in Methodist churches in California and forwarded to the head office of the corporation in the State of Illinois. Local church officials have no discretion to retain funds collected in California for local use; it is mandatory that all funds be remitted to Illinois.

In brief, GCFA controls the purse-strings of the United Methodist Church and dominates all church activities in the nation. The GCFA controls the income, pensions and insurance programs of thousands of persons and controls the purchase, sale and financing of millions of dollars of real property throughout the United States, including California. It is, therefore, "doing business" in the State of California and the County of San Diego.

Accordingly, the motion to quash service of process on the General Council on Finance and Administration, an Illinois corporation, is denied.

Dated: March 20, 1978.

/s/ Ross G. Tharp

Judge of the Superior Court

JUDGE'S LETTER TO COUNSEL

The Superior Court
OF THE
State of California
COUNTY COURTHOUSE · SAN DIEGO 92101

CHAMBERS OF
ROSS G. THARP
JUDGE

MAILING ADDRESS
POST OFFICE BOX 3724
SAN DIEGO, CALIFORNIA 92112
(714) 236-2121

March 20, 1978

Re: Frank T. Barr v. United Methodist Church, Superior Court No. 404611

To All Counsel of Record:

Enclosed please find my ruling on the motions to quash.

All parties hereto are urged to re-examine their respective positions with a view toward returning to the conference table. Since I will not try this case should it proceed to trial, I am taking the liberty of sharing with you my appraisal of your respective positions.

First, I believe the plaintiffs' claims against the Pacific & Southwest Conference are meritorious and that they will in all probability prevail at time of trial. Likewise, I believe that plaintiffs will prevail against the GCFA on the alter ego theory in view of the GCFA's complete domination and control of the Conference. Further, I believe the award of damages will be enormous.

On the other hand, so far as plaintiffs' motion for preliminary relief is concerned, i.e., their prayer to require payment of some $300,000 per month, there is, at this time, insufficient evidence to establish an existing hardship on the plaintiffs. Of the one hundred and sixty (160) named plaintiffs, fewer than sixty (60) supplied the information requested of them by their counsel. In order for me to determine relative hardship, I must have competent evidence submitted, not merely an emotional appeal. The emotional strain that this tragedy has placed upon the litigants is not alone sufficient for me to order the injunctive relief prayed for.

Accordingly, enclosed herewith is a form which must be completed by each of the named plaintiffs before April 1, 1978. Upon receiving and reviewing said data, it may well be concluded that there is no immediate financial crisis on

Page 2
March 20, 1978
To All Counsel of Record
Re: Barr v. United Methodist
No. 404611

the part of the plaintiffs, and that they (or most of them) can afford to wait until trial for a redress of their grievances. At least one of the defendants is well able to respond in damages and the likelihood of the plaintiffs' receiving a very sizable judgment within the next few months bears heavily in their favor.

The defendants, I believe, should consider offering some of their abundant means to help resolve this problem. The homes are now in the hands of a very competent person who has done a masterful job in stabilizing and containing the problem. If funds were made available to him -- in the form of a loan or otherwise -- he would be in a position to undertake an advertising and promotional program to fill the existing vacancies. It might be well to remember the old adage: "Charity begins at home".

I have spoken with Mr. Matthews to determine his availability to meet with you gentlemen at the conference table, and he is ready, willing and able to do so. Since "The United Methodist Church" is "out of the case", perhaps Mr. Witwer would be willing to assume a position of leadership in bringing the litigants together to confer once more. Continued litigation may prove devastating to all concerned.

Very truly yours,

ROSS G. THARP

RGT:ky
Enc.

COURT OF APPEAL'S ORDER

COURT OF APPEAL—STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

COURT OF APPEAL-FOURTH DIST
FILED
JUN 27 1978
ERVIN J. TUSZYNSKI, Clerk
By Tom Kelly Deputy Clerk

DIVISION ONE

GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH,
Petitioner,
vs.
SUPERIOR COURT ETC.,
COUNTY OF SAN DIEGO,
Respondent,
FRANK T. BARR, ET AL.,
Real Parties in Interest.

4 Civil No. 18175

SUPERIOR COURT NO. 404611

BY THE COURT:

The petition for writ of mandate is denied.

Brown
Presiding Justice

Copies to: Witwer, Moran, Burlage & Atkinson-Chicago
Sullivan, Jones & Archer-SD
Milberg, Weiss, Bershad & Specthrie-SD
Superior Court-SD

CALIFORNIA SUPREME COURT ORDER

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 27 19[illegible]

I have this day filed Order

HEARING DENIED

In re: 4 Civ. *No.* 18175

General Council on Finance and Administration of the United Methodist Church v. Superior Court, San Diego

Respectfully,

G. E. BISHEL
Clerk

57371-877 1-78 3M OSI

TABULATION OF MINUTE ORDER ERRORS

MINUTE ORDER ERRORS	CONTRADICTORY AUTHORITY*
A. "According to the Methodist 'Book of Discipline,' the GCFA operates 'as the central treasury and fiscal agent of The United Methodist Church'." Source: Apparently derived from argument contained in plaintiffs' Memorandum of Points and Authorities in Opposition to Motions to Quash Service.	A. No such statement is contained in The Book of Discipline and accordingly, the quoted material is not part of the law and polity of Methodism. As best we can determine, the only item in the record containing this terminology is a letter dated September 23, 1974, From R. Brian Brawner, former General Secretary-Treasurer of GCFA, to IRS containing such language as Brawner's interpretation of GCFA's function. If such interpretation is to be featured in the Minute Order, at least it should be properly identified and should not be given the force of Church law purportedly derived from The Book of Discipline. There are numerous Treasuries in Methodism, and "Central Treasury" should not be taken as depicting a principal repository for the whole Church.
B. "It [GCFA] 'provides property, investment and management functions for the general Church." Source: A verbatim extract from plaintiffs' self constructed graphic chart which chart was objected to for lack of authentication and gross	B. While the quoted terminology is technically correct, as far as it goes, when taken out of context, it tends to create the impression that the enumerated functions are extended throughout the entire Methodist Connection at its several levels of operation. Such an impression ignores the fact that GCFA's range of financial services

* From The Book of Discipline and the sworn testimony of GCFA's expert witnesses.

B. (Continued)

inaccuracy at the hearing of March 10, 1978. The chart language, in turn, was drawn from the Glossary which expressly provides that it ". . . . is not part of the law of Church . . ." (The Book of Discipline at page 591.

B. (Continued)

are extended to but a small part of the entire denomination and are primarily confined to a group of eight (8)** agencies functioning at the Church's general level.

The vast majority of operating units of United Methodism are not, in any sense, fiscally accountable to GCFA and have little if any, contact with it. Excluded from the range of financial services which GCFA performs are all 43,000 local churches, the district conferences, the annual conferences, the jurisdictional conferences and the hundreds of colleges, hospitals, homes for the aged, orphanges and other institutions related to Methodism.

GCFA does not even provide fiscal services for all agencies situated at the general level of the Church. Among the exluded general-level entities are the General Board of Pensions, the General Board of Global Ministries, its Division of Education and Cultivation, its Division of Health

** The 8 agencies receiving GCFA's range of financial services are as follows: General Board of Church and Society, General Board Discipleship, General Board of Higher Education in Ministry, United Methodist Youth Ministry Organization, Commission on Religion and Race, Commission on Archives and History, Commission on Status and Role of Women in Church, and United Methodist Communications. In addition, 2 other constitutional units of the Church, not considered "general" agencies as such, but which receives said financial service from GCFA are: The Judicial Council and The Council of Bishops.

B. (Continued)

C. "The GCFA has responsibility to 'receive, collect, and hold in trust for the benefit of The United Methodist Church, its general funds (and) any and all donations, bequests, and devises of any kind . . . that may be given . . . to the United Methodist Church'."

Source: Apparently, item 5 on the challenged chart which in turn, purports to quote from par 906(7), page 336 of The Book of Discipline.

B. (Continued)

and Welfare Ministries (relating to hospitals and homes for the aged), its National Division, its United Methodist Committee on Relief, its Women's Division, the World Division, the Crusade for Scholarships, the Committee on Personnel in Missions, the Committee on Diaconal Ministry, the General Board of Publications and The United Methodist Publishing house.

Obviously, those agencies which are exluded from GCFA's orbit of activities far outnumber the included units of United Methodism, contrary to the implication of the Minute Order.

C. This material is misquoted and surprisingly altered. It changes the meaning of the sentence actually contained in The Book of Discipline, par 906(7). That sentence, correctly quoted, reads as follows: [GCFA shall have the authority and responsibility] ". . . to receive, collect, and hold in trust for the benefit of [1] The United Methodist Church [2] its general funds, or [3] its general agencies, any and all donations, bequests, and devises of any kind, real or personal, that may be given, devised, bequeathed, or conveyed to the United Methodist Church, as such, or to any general fund or agency of The

MINUTE ORDER ERRORS

C. (Continued)

CONTRADICTORY AUTHORITY

C. (Continued)

United Methodist Church for any benevolent, charitable, or religious purposes, and to administer the same and the income therefrom in accordance with the directions of the donor . . ." [Bracketed numbers added for emphasis].

As can be seen, the Minute Order apparently relying upon a partial quotation from the chart, pieces together a sentence implying that GCFA presides, as trustee, over a massive trust consisting of UMC's "general funds." In actuality, the disciplinary language refers to "general funds," not as the corpus of a trust, but rather, to identify that group of 17 separate authorized general level funds which are in fact made the cestuis que trust with respect to any donations, bequests and devises which may be made for their benefit.

The trust fund actually referred to is the same one held in the name of "The Board of Trustees of The United Methodist Church" and aggregating, approximately $3.5 million of restricted assets held pursuant to the directions of various donors and testators.

In sum, the misquotation in the Court's order converts a limited purpose trust fund consisting

A-10

MINUTE ORDER ERRORS

C. (Continued)

CONTRADICTORY AUTHORITY

C. (Continued)

of gifts specially made to the United Methodist church, or one of its 17 authorized general level funds, into a seemingly awesome trusteeship of all United Methodist property. We point out that in the United Methodist lexicon, "general funds" refers not to unrestricted monies of the whole church but rather, to specific funds authorized by General Conference for benevolent purposes and which are funded by local church member donations passed through GCFA as a conduit.

A-11

D. "In 1976, the GCFA received and controlled over $60,000,000."

Source: Apparently, arguments contained in plaintiffs' Memorandum in Opposition to Motions to Quash.

D. This statement once again illustrates the Plaintiffs' mischaracterization of GCFA's authority. While it did receive and disburse $60,185,177.79 during 1976. GCFA in no sense "controlled" those monies, nor could it exercise any, meaningful discretion over their use. The Book of Discipline, par 906.2 states:

"it [GCFA] shall receive and disburse in accordance with budgets approved by the General Conference, all funds raised throughout the Church for . . . [here follows a list of the major general level funds serviced by GCFA]" (Emphasis added.)

D. (Continued)

D. (Continued)

The Book of Discipline further provides (par 908) as follows:

> ". . . A separate account shall be kept of each such fund and none of them shall be drawn on for the benefit of another fund."

As those provisions of church law indicate, GCFA has no authority to control or to pick and choose the destinations, amounts and uses of these benevolent funds aggregating roughly $60 million in annual flow.

GCFA's only discretions are to suspend payments where duplication, gay rights or job discrimination are involved. To date, no occasion has arisen in which GCFA has been called upon to exercise any of these limited discretions.

E. "Local Church officials have no discretion to retain funds collected in California for local use; it is mandatory that all funds be remitted to Illinois."

Source: Apparently, inferred from allegations made in Plaintiffs' Memorandum of Points and Authorities in Opposition to Motions to Quash.

E. As any practicing Methodist is aware, this statement is totally incorrect. First, "local church officials" have total discretion in determining what funds are to be retained in California for local use. There is no enforcement mechanism in United Methodism to compel the acceptance of apportionments. While most local churches pride themselves on their record of voluntary support of general church askings, the fact is

E. (Continued)

E. (Continued)

that a local church may elect to decline in toto the apportionments or askings for general level funds with the result that no monies would be transmitted from such local church through an annual conference treasurer to GCFA.

Only after the general or "world service" apportionment has been accepted in whole or in part and after local member donations are identified to a specific benevolent purpose, and placed in transit to GCFA through the annual conference treasurer, can it be said that church officials no longer have discretion to withhold or divert the funds. In that situation, of course, the funds must be applied to their designated use which necessarily involves forwarding the same to GCFA in Illinois. Likewise, the notion that "all funds" must be remitted to Illinois is utterly without foundation. Only 5.5% of funds generated in the local churches (assuming that the local churches wish to subscribe to general level programs) are passed along to GCFA for allocation to the various funds and agencies. This means that 94.5% of the money raised, from worshippers in local churches remains in the place of origin for use of the local church and its related annual conference for operations and benevolent programs.

MINUTE ORDER ERRORS

F. "The GCFA controls the income, pensions and insurance programs of thousands of persons . . ."

Source: Presumably, items 20 and 21 in Plaintiffs' chart.

CONTRADICTORY AUTHORITY

F. The fact that GCFA adopts certain minimum standards of fairness in compensation and nondiscriminatory employment practices applicable to its sister agencies at the general level of the church (The Book of Discipline, ¶ 907, page 340) can scarcely said to be the equivalent of "control" over the income of "thousands of persons." Further, GCFA has no control over pensions, the pension area being committed to the General Board of Pensions of The United Methodist Church. The only pension involvement of GCFA pertains to bishops, and such involvement is essentially limited to the transmission of funds for pensions out of the assets of Episcopal Fund. GCFA does not even pay such bishops' pensions, the actual remittance being made by the General Board of Pensions.

Finally, GCFA's function in connection with insurance programs is wholly consultative and does not begin to add up to "control." GCFA makes known to local churches and other units throughout United Methodism, the availability of the group insurance program, but does not and cannot coerce an election by any unit to enroll. Those local churches and units who do enroll, enter into their own individual insurance contracts with the carrier and finance their own insurance premiums.

MINUTE ORDER ERRORS

G. "The GCFA controls . . . the purchase, sale and financing of millions of dollars of real property throughout the United States, including California."

Source: Apparently, item 16 on the Plaintiffs' chart.

CONTRADICTORY AUTHORITY

G. Inasmuch as GCFA is the general level agency within the United Methodist denomination having fiscal expertise, it is not surprising that The Book of Discipline would vest, in GCFA, a consultative and review function concerning the plans of its sister boards and agencies to buy or sell real estate (The Book of Discipline at ¶ 907 (1) page 337-338). But this observation is misleading in one respect and totally errs in a second respect. First, whatever power of review and theoretical "veto" GCFA may possess in real estate matters does not, as the Order suggests, apply broadly throughout the denomination. Rather, it is specifically limited to those few sister boards and agencies which are found at the general level of the church.

Second, the record refutes the portion of the Order which states that GCFA's real property "control" extends to California. None of the general level boards and agencies which must consult with GCFA on their building, leasing of real estate or transfer plans, are physically headquartered in California. Thus, there is no occasion for the exercise of such purported "control." Additionally, the Order ignores the fact that The Council does not own nor does it lease any real property in the State of California. Here

MINUTE ORDER ERRORS	CONTRADICTORY AUTHORITY
G. (Continued)	G. (Continued) again, the Court converts a narrowly defined fiscal function aimed at a small group of general level agencies and transforms it into a far reaching "control." It even places this "control" in California despite the absence of any real estate in the State upon which such "control" might operate.
H. "In brief, GCFA controls the purse-strings of the United Methodist Church and dominates all church activities in the nation."	H. GCFA "controls" no purse strings anywhere in United Methodism, but extends its array of fiscal services to a relatively small number out of the tens of thousands of United Methodist entites worldwide. It "dominates" none of these entities, much less "all church activities in the nation." GCFA does not legislate for United Methodism. Only the General Conference in its quadrennial sessions may do that. Further, The Book of Discipline ¶ 612 provides: "Speaking for the Church, (1) no person, no paper, no organization has the authority to speak officially for The United Methodist Church, this right having been reserved exclusively to the General Conference under the Constitution."

MINUTE ORDER ERRORS	CONTRADICTORY AUTHORITY
H. (Continued)	H. (Continued) GCFA is not a policy maker, either in matters spiritual or temporal. It is, in fact, a provider of fiscal services in a limited sphere of activity and provides consultative functions in the areas of finance and administration where it has its expertise.

Superior Court's Order Denying Extension of Time to Plead

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

FRANK T. BARR, et al., Plaintiffs, vs. GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE .. UNITED METHODIST CHURCH, et al., Defendants.	NO. 404611 ORDER EXTENDING TIME TO PLEAD PURSUANT TO CCP 418.10

The *ex parte* motion of defendant the General Council on Finance and Administration of The United Methodist Church (hereinafter "GCFA"), for an order extending its time to plead pursuant to Code of Civil Procedure §418.10(c) came on for hearing before me on August 1, 1978, in Department 10 of the above-entitled court. GCFA appeared specially through its counsel Sullivan, Jones & Archer by Robert V. Vallandigham, Jr. Esq., and Witwer, Moran, Burlage & Atkinson by Samuel W. Witwer, Jr., Esq.; Milberg Weiss Bershad & Specthrie by William S. Lerach, Esq., and Wied, Granby & Alford, A.P.C., by Colin W. Wied, Esq., and David J. Yardley, Esq., appeared for plaintiffs; Hughes, Hubbard & Reed by John A. Blue, Esq., appeared for defendant Coopers & Lybrand; and Musick, Peeler & Garrett by William McD. Miller, III, Esq., appeared for defendant the Pacific and Southwest Annual Council of The United Methodist Church.

After full consideration of the moving papers and oral argument of counsel, the Court holds that Code of Civil Procedure § 418.10(c) does not authorize it to extend the time within which GCFA may plead herein until after final resolution of GCFA's petition for writ of certiorari

by the United States Supreme Court, but instead authorizes the Court to permit a maximum extension of twenty (20) days in addition to the ten (10) days within which to plead following the denial of GCFA's petition for hearing by the California Supreme Court on July 27, 1978, specified by § 418.10(c).

Good cause appearing therefore:

IT IS HEREBY ORDERED that GCFA's motion for an extension of time to plead, pursuant to Code of Civil Procedure § 418.10(c), until ten (10) days after receipt of notice of final resolution of GCFA's petition for writ of certiorari by the United States Supreme Court is denied.

IT IS FURTHER ORDERED, pursuant to code of Civil Procedure § 418.10(c), that GCFA shall have to, and including, August 28, 1978, to plead therein.

IT IS FURTHER ORDERED that all other defendants herein now due to plead prior to August 28, 1978, shall have to, and including, that date to plead.

DATED: August 3, 1978.

JAMES L. FOCHT
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

SULLIVAN, JONES & ARCHER

By: /s/ ROBERT V. VALLANDIGHAM, JR.

MILBERG, WEISS BERSHAD & SPECTHRIE

By: /s/ WILLIAM S. LERACH

Supreme Court, U. S.
FILED
SEP 22 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-300

THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO, FRANK T. BARR, et al., Real Parties in Interest,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-300

THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO, FRANK T. BARR, et al., Real Parties in Interest,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO

Real Parties in Interest, Frank T. Barr, et al., respectfully answer the Petition for Certiorari in the Supreme Court as follows:

COUNTER STATEMENT OF QUESTIONS PRESENTED

When a non-resident religious corporation is sued in a state court for alleged breach of contract, fraud and statutory violations, and contests *in personam* jurisdiction:

1. **Do the First and Fourteenth Amendments require the court to accept the corporation's characterization of its function and contacts with the state, and bar the court from considering all contrary evidence?**

2. **Do the First and Fourteenth Amendments require that there be a direct connection between the corporation's presence in the state and the cause of action in addition to systematic and wide ranging contacts sufficient to satisfy the long established "minimum contacts" standard of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)?**

3. **Is the due process clause of the Fourteenth Amendment, as interpreted by *International Shoe*, violated by the state's exercise of jurisdiction over the corporation which, *inter alia*, collects approximately $2 million per year from, conducts training seminars in, has employees who regularly travel to, and pays the salaries and expenses of church employees in, the state?**

STATEMENT OF THE CASE

This is an action in the Superior Court, San Diego County, California, on behalf of Real Parties in Interest, some 1,950 present and former residents (the "Plaintiffs") of fourteen retirement homes and convalescent hospitals sponsored by The United Methodist Church ("UMC") and known as Pacific Homes Corporation ("Pacific Homes"). The defendants include, *inter alia*, UMC, The General Council on Finance and Administration of The United Methodist Church ("Petitioner" or "GCFA"), and The Pacific and Southwest Annual Conference of The United Methodist Church ("PSWAC"), collectively the "Church Defendants." The action alleges that Pacific Homes was the alter ego, agency and instrumentality of the Church Defendants and seeks relief for alleged breach of contract, fraud and statutory violations. App. Ex. No. C.[1/]

The Plaintiffs are parties to life care contracts with Pacific Homes entitling them to life care, including medical, nursing and convalescent care, accommodations and meal service. Many Plaintiffs pre-paid their life care contracts, some in amounts as high as $150,000, and were entitled to life time care at no additional cost. The remaining Plaintiffs' contracts required fixed monthly payments for life that were guaranteed never to increase, or provided for limited increases (subject to a ceiling) based upon inflation. Plaintiffs'

[1/] All record references herein are to the record as transmitted to the California Court of Appeal and the California Supreme Court. Plaintiffs note that GCFA's Petition contains virtually no record references to support its self-serving and grossly distorted presentation of the evidence in the record in this proceeding.

contracts have been breached by Pacific Homes, and virtually all Plaintiffs are now required to make monthly payments substantially greater than those required by their respective contracts in order to provide operating funds to Pacific Homes and avoid its liquidation.[2]/

GCFA filed a motion to quash service of process for lack of *in personam* jurisdiction which was denied by the Superior Court on March 20, 1978. App. Ex. No. A. The California Court of Appeal and the California Supreme Court thereafter refused to disturb the Superior Court's ruling.[3]/ On September 5, 1978, GCFA answered the complaint.

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[2]/ On February 18, 1977, Pacific Homes sought protection under Chapter XI of the Bankruptcy Act in the United States District Court for the Central District of California and suits against it have been stayed. On December 9, 1977, Pacific Homes entered into a Chapter X proceeding and it is now under the control of Richard E. Matthews, the Chapter X Trustee.

[3]/ There is a serious question as to whether the decision of the Superior Court challenged by GCFA is a final decision within 28 U.S.C. §1257. No California case holds that a defendant who, like GCFA, objects to jurisdiction *and unsuccessfully seeks all available appellate review* (by way of the California statutory mandate procedure) of the decision denying its jurisdictional objections, waives its jurisdictional objection by thereafter answering. In *McCorkle v. City of Los Angeles*, 70 Cal.2d 252, 449 P.2d 453, 74 Cal.Rptr. 389 (1969), the defendant objected to jurisdiction of the trial court, *but did not seek review of that decision via California's statutory mandate procedure. Id.* at 256. Thus, in *McCorkle* the defendant had a choice - answer or seek a writ of mandate - and chose to answer, thereby voluntarily waiving its jurisdictional objection. GCFA sought review of the trial court's decision via mandate and can argue that it has not therefore waived its objection. By asking this Court to review the decision of the Superior Court at this time, GCFA is, in effect, seeking an advisory opinion from this Court on a matter of California law.

The evidence before the Superior Court consisted of thousands of pages of documentary materials and numerous deposition transcripts presented by Plaintiffs as well as affidavits of experts and documents presented by GCFA. The evidence demonstrated that GCFA "provides property, investment, and management functions for the general Church." *The Book of Discipline of the United Methodist Church* (hereinafter "*BOD/UMC*"), Glossary at 600, App. Ex. No. H (Ex. A).[4]/ GCFA is accountable[5]/ to UMC through UMC's General Conference in all matters relating to the receiving, disbursing and reporting of general church funds. *BOD/UMC*, ¶906 at 333. GCFA is amenable[6]/ to the General Conference. *BOD/UMC*, ¶904 at 330. GCFA has the responsibility to "receive, collect, and hold in trust for the benefit of The United Methodist Church . . . any and all donations, bequests, and devises of any kind, real or personal, that may be given . . . or conveyed to the United Methodist

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[4]/ The quoted portion of the Glossary of the *BOD/UMC* is a synopsis of approximately nine pages of textual material appearing at 333-341. *BOD/UMC* ¶906-7 at 333-41. The Glossary is a "guide to" UMC's law. *BOD/UMC*, Glossary at 591.

[5]/ "*Accountability.* The requirement upon an organized structural unit in The United Methodist Church to report, explain, or justify its action(s) to another unit in the church structure." *BOD/UMC*, Glossary at 591.

[6]/ "*Amenability.* The requirement upon an organized unit in The United Methodist Church to anser to, act under instruction of, agree with, yield to, or submit to another unit in the church structure. *It connotes legal responsibility.* On the general level, all of the generl agencies that have been constituted by the General Conference are amenable to the General Conference, except as otherwise provided." *BOD/UMC*, Glossary at 592 (emphasis added).

Church as such. . . ." *BOD/UMC*, ¶906(7) at 336. In applying to the Internal Revenue Service for a "group [tax] exemption to be granted in the name of The United Methodist Church and its affiliated organizations," GCFA represented that it "functions as the central treasury and fiscal agent of the United Methodist Church." App. Ex. No. M (Ex. No. 3 at 1, 2, 6).[7/]

GCFA's control of the finances of UMC is broad and complete and includes the following:

1. GCFA requires "all agencies receiving general church funds to follow uniform accounting classifications and procedures for reporting" and an "annual audit of all treasuries receiving general church funds, following such auditing procedures as [GCFA] may specify." *BOD/UMC*, ¶906(4) at 335.

2. All agencies receiving general church funds must submit annual budgets to GCFA in such form as GCFA requires. *BOD/UMC*, ¶906(4) at 335-336.

3. GCFA ensures "that expenditures of agencies receiving general church funds do not exceed receipts and available reserves, and this within an approved budget." *BOD/UMC*, ¶906(3) at 335.

7/ Thus, while the Superior Court incorrectly attributed the statement "the GCFA operates 'as the central treasury and fiscal agent of the United Methodist Church' " to the Methodist 'Book of discipline,' " the statement is unquestionably that of GCFA, and therefore the Superior Court's finding is properly supported by the evidence.

4. GCFA establishes "policy governing the functions of banking, payroll, purchasing, accounting and budget control for all agencies receiving general church funds." *BOD/UMC*, ¶906(5) at 336.

5. A GCFA committee prescribes all official forms and records for "use in the Church." *BOD/UMC*, ¶905(4)(c) at 332.

6. GCFA must "develop investment policies for . . . and review . . . performance of all permanent funds of all agencies receiving general church funds." *BOD/UMC*, ¶906(6) at 336.

7. "[A]gencies receiving general church funds shall be *fiscally accountable* to the [GCFA]." *BOD/UMC*, ¶906 at 333.

8. GCFA requires every general church agency "to follow uniform policies and practices in the employment and remuneration of personnel. . . ." *BOD/UMC*, ¶907(7)(a) at 339.

9. GCFA must "withhold approval of the entire budget of any agency of any church-related institution receiving general church funds" until it receives a written certification that the entity "has established and has complied with a policy" on non-discrimination in employment and is, "insofar as possible, purchasing goods and services from vendors who are in compliance with such policies. . . ." *BOD/UMC*, ¶910 at 342-343. If GCFA determines that "an agency or institution receiving general church funds is not in compliance with the equal employment opportunity policies and the salary and employee benefit schedules established by [a committee of GCFA]," GCFA has the authority to suspend future funding of such agency. *BOD/UMC*, ¶907(7)(d) at 340.

10. GCFA "institute[s], manage[s], and maintain[s] a churchwide insurance program for the protection of United Methodist Church property and persons, covering all areas involving the interest of The United Methodist Church. . . ." *BOD/UMC*, ¶908(13) at 341.

11. GCFA establishes "policy governing the leasing, sale, rental, renovation, or purchase of property by a general board or agency." *BOD/UMC*, ¶907(1) at 337-338. Any general board or agency must submit plans "to acquire or sell real estate or erect a building or enter into a lease" to GCFA, which must determine if such action is "in the best interest of The United Methodist Church." *Id.* GCFA can disapprove such a transaction. *Id.*

12. GCFA exercises "on behalf of the General Conference a property management function, by holding the title to and managing real property for the use of general agencies of the Church." *BOD/UMC*, ¶907(3) at 338.

13. GCFA determines "policy for ownership, lease, and use of computers by general church agencies and . . . formulate[s] policy governing the data-processing function carried out by [such] agencies." *BOD/UMC*, ¶907(6) at 339.

14. GCFA must "withhold approval of any item or items in the budget or budgets receiving general church funds which in its judgment represent unnecessary duplication of administrative function. . . ." *BOD/UMC*, ¶910(2) at 343.

15. Any "agency of The United Methodist Church proposing to borrow funds" in excess of stated amounts or for more than 12 months must obtain the approval of GCFA. *BOD/UMC*, ¶910(3) at 343.

16. No "general board, cause, agency, or institution or any organization, group, officer, or individual of The United Methodist Church or to which The United Methodist Church contributes financial support" may make a special churchwide appeal absent authorization from GCFA. *BOD/UMC*, ¶910(4) at 344.

17. GCFA is "responsible for ensuring that no board, agency, committee, commission, or council shall give funds to any 'gay' caucus or group, or otherwise use such funds to promote the acceptance of homosexuality." *BOD/UMC*, ¶907(13) at 337. GCFA has "the right to stop such expenditures." *Id.*

The *BOD/UMC* demonstrates that GCFA is what its name suggests - the financial nerve center of UMC.

GCFA has a continuous, significant and economically beneficial presence in California. The evidence submitted to the Superior Court demonstrated that GCFA:

a) Collected, in regular monthly installments, $1.938, $1.982 and $2.319 million in the years 1975, 1976 and 1977 respectively from subordinate units of UMC in California (cumulative billings for 1974-78 were $10.8 million). App. Ex. No. S (Ex. Nos. 76-81).

b) Has employees who, in the course of GCFA's business, regularly travel to California, correspond with California residents, conduct training seminars in California and have telephone conversations with California residents. App. Ex. No. P at 161-188; App. Ex. No. 15 at 161-168; App. Ex. No. Q (Ex. Nos. 61-123).

c) Pays salaries and expenses in excess of $100,000.00 per year to UMC Bishops residing in California. App. Ex.

No. M (Ex. No. 2 at 154-155); App. Ex. No. M (Ex. No. 2 at 154-155); App. Ex. No. N at 126; App. Ex. No. Q (Ex. No. 124 at 7-10, 12).

d) Provides computer services to California units of UMC which have generated revenues from California in excess of $50,000.00 since mid-1975. App. Ex. No. Q (Ex. Nos. 39, 40, 42); App. Ex. No. 14 at 41-44.

e) Prepares and distributes financial and statistical reporting forms to California UMC units, which units are required to complete and return them to GCFA. App. Ex. No. 16 (Ex. Nos. 3-8 & 10).

f) Administers a church-wide insurance program covering numerous California churches and receives assignments of policy dividends from such churches. App. Ex. No. M (Ex. No. 2 at 19, 72); App. Ex. No. N at 124; App. Ex. No. Q (Ex. Nos. 68, 69, 77, 82 & 109); App. Ex. No. 13 (Ex. Nos. 1-10).

g) Has, and has had, members, directors and officers who reside and perform their respective functions for GCFA in California. App. Ex. No. Q (Ex. No. 124 at 102); App. Ex. No. N at 59-60, 66-67; App. Ex. Nos S (Ex. No. 13 at 97-98).

GCFA challenges the Superior Court decision on three grounds. First, GCFA contends that the Superior Court violated the First and Fourteenth Amendments in basing its assertion of jursidiction on Plaintiffs' characterization of GCFA's role in the structure of UMC and rejecting contrary testimony of church officials and experts. Second, GCFA

contends that use of the "minimum contracts" standard of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), in determining jurisdiction over a nonresident religious organization violates the First and Fourteenth Amendments. Third, GCFA argues that, even under the traditional minimum contacts analysis, its connection with the State of California is too attenuated under the standards implicit in the Due Process Clause of the Fourteenth Amendment to justify burdening it with defending this action in California.

Upon filing its Petition for Certiorari, GCFA sought a stay of the proceeding below from Justice Rehnquist. Justice Rehnquist denied the requested stay holding that GCFA's argument that the Superior Court could not make a conclusion contrary to GCFA's assertions as to its function in the UMC was "plainly . . . wrong," that its claim of entitlement to a special and restrictive jurisdictional test was "untenable" and that GCFA had not demonstrated that the Superior Court failed to properly apply the due process standards of *International Shoe*. *The General Council on Finance and Administration of The United Methodist Church v. Superior Court of California, County of San Diego*, ___U.S. ___. (No. A-200, Sept. 1, 1978, Slip Opinion at 4-5) (Rehnquist, J., in chambers).

ARGUMENT

I.

THE COURT BELOW DID NOT VIOLATE THE FIRST AND FOURTEENTH AMENDMENTS BY WEIGHING THE EVIDENCE BEFORE IT AND CONCLUDING THAT GCFA IS THE CENTRAL TREASURY AND FISCAL AGENT OF UMC AND DOES BUSINESS IN CALIFORNIA.

The linchpin of GCFA's challenge to the Superior Court's order is its assertion that the Superior Court based its ruling on documentary evidence presented by Plaintiffs which "*was objected to by GCFA* but was never ruled upon by the trial judge." GCFA Petition at 10. Plaintiffs have pointed out the falsity of this statement in three appellate briefs. GCFA's counsel actually said:

> Secondly, your Honor, I would note that you have been presented with a good deal of material. I think, had you received a letter from Mr. Lerach concerning the situation timewise, so far as the depositions are concerned, other documents, and *we would like to move forward but we do not waive any objection to the proper authentication of any of the documents.*

App. Ex. No. Y at 4 (emphasis added).

Far from objecting to the Superior Court's consideration of any of the documentary evidence filed by Plaintiffs, GCFA merely preserved its right to object and invited the Superior Court to "move forward" with the proceedings. GCFA never made any objection to the receipt of any evidence offered by

Plaintiffs, and the record clearly reflects the absence of objection.[8]/ GCFA thus urges this Court to review a decision which GCFA asserts was based on improperly considered evidence even though GCFA did not object to the receipt of that evidence.[9]/

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[8]/ California law requires that an objection to proffered evidence be "timely made and so stated as to make clear the specific ground of the objection. . . ." Cal. Evid. Code §353(a) (West 1968). Unless objection is properly made to the evidence in the trial court, the appellate court will not review the admissibility of the evidence. *Id.* Failure to object at all obviously waives any defect. *Perry v. McLaughlin,* 212 Cal. 1, 6, 297 P. 554 (1931); *Trigueiro v. Skow,* 24 Cal.App.2d 253, 256, 74 P.2d 836 (1937); B. Witkin, *Evidence* §1285 at 1188-89 (1966).

[9]/ The Superior Court's decision dismissing UMC from the litigation as not being a suable entity is on appeal to the California Court of Appeal. A recent decision of a federal court in *Trigg v. Pacific Methodist Investment Fund,* No. 78-0198-S (S.D. Cal. August 15, 1978) casts grave doubt on the validity of GCFA's contentions in its Petition. *Trigg* is a civil action alleging violations of the federal and California securities laws brought on behalf of the purchasers of $5 million in bonds issued to aid Pacific Homes. GCFA and UMC moved to dismiss the *Trigg* action for lack of jurisdiction, making the same arguments and relying upon substantially the same evidence as presented in this action. The Church Defendants objected to all of Plaintiffs' evidence, which objections the court termed "vexatious and harassing" in overruling almost all of them. On August 15, 1978, the federal court denied the Church Defendants' motions. A copy of the ruling and order of the District Court are attached as Exhibits 2 and 3 respectively to the Lerach Affidavit, submitted to Mr. Justice Rehnquist in opposition to GCFA's stay motion.

With respect to the function of GCFA vis-a-vis UMC, the federal court ruled:

GCFA also seeks review of its claim that its constitutional rights were violated when the Superior Court rejected GCFA's version of its role within UMC and accepted a "deviant version . . . urged upon the court in arguments by strangers to the denomination unaided by expert testimony or other competent evidence." GCFA Petition at 4. However cleverly phrased, the gravamen of GCFA's arguments is that (i) the only permissible interpretation of the objective evidence of the scope and nature of GCFA's temporal activities is that view advanced by GCFA; and (ii) the only persons who may evaluate the evidence are those "experts" chosen by GCFA.

Footnote 9 continued

> A good deal of discussion has taken place in the papers filed, and in argument this morning, with regard to the function of the General Council on Finance and Administration, and it has been pointed out that this is a very active body, or agency, entity, or whatever it might be called, corporation, evidently, *which exercises a permeating administration and control of certain aspects of finances of the Methodist hierarchical structure.* It is true, evidently, as stated by Mr. Witwer, that it administers only approximately five or five and a half percent of the total collections or givings obtained at the local level, but when that small percentage is translated into dollars, *it comes to some sixty or sixty-five million dollars, a very substantial sum, and certainly as to that fund, or those funds, the General Council on Finance and Administration is the fiscal arm of the United Methodist Church.*

Reporter's Transcript of Proceedings at 16, *Trigg v. Pacific Methodist Investment Fund,* (S.D. Cal. Aug. 15, 1978) (emphasis added).

Of course, GCFA would have won below if only its version of the evidence was presented and its interpretation of the facts had been accepted. However, as customary in our legal system, Plaintiffs presented countervailing evidence which supported their assertions. The Superior Court weighed the evidence offered by Plaintiffs against the evidence offered by GCFA and resolved the factual dispute in favor of Plaintiffs.

In any event, the exercise of jurisdiction over GCFA does not turn on the structure of UMC or on GCFA's role therein. Rather, it merely requires a factual determination of whether GCFA has minimum contacts with California. The polity of UMC is irrelevant to this factual issue. Contrary to GCFA's assertion that the Superior Court rewrote the religious polity of UMC in entering the challenged order, the Superior Court actually made a *factual determination* based upon the evidence submitted to it of GCFA's substantial, ongoing and beneficial contacts with California.

GCFA has consistently sought to convert its adversarial position in this litigation into a religious rite and thereby to preclude inquiry into, or evaluation of, evidence other than the evidence it prefers and the declarations of its own "experts." No rule of law says that merely because those in control of litigation strategy in a particular suit involving GCFA assert that GCFA is not the central treasury and fiscal agent of UMC and has no ongoing contacts with California, that such assertions are binding upon the civil courts of our land. The law is directly to the contrary. Justice Rehnquist so recognized in denying GCFA's motion for a stay, stating:

In my view, applicant plainly is wrong when it asserts that the First and Fourteenth Amendments prevent a civil court from independently examining, and making the ultimate decision regarding, the structure and actual operation of a hierarchical church and its constitutent units in an action such as this. There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. See *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, supra.* But this Court never has suggested that those constraints similarly apply outside the context of such intra-organization disputes. Thus, *Serbian Orthodox Diocese* and the other cases cited by applicant are not in point. Those cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. *Id.*, at 709-710. Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract and statutory violations are alleged. As the Court stated in another context, "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). Nor is it entirely clear that the Superior Court's

> determination of the jurisdictional question was based upon its interpretation of Methodist polity; it is equally likely that the court's decision was founded on the related but separate issue of applicant's contacts with the State of California.

The General Council on Finance and Administration of The United Methodist Church v. Superior Court of California, County of San Diego, ___ U.S. ___ (No. A-200, Sept. 1, 1978, Slip Opinion at 4-5) (Rehnquist, J., in chambers).

A court's determination of the organizational structure of a religious body poses no First Amendment problem in an action by third parties against a religious organization for tortious conduct, breach of contract or statutory violations arising fro a the temporal or secular activities of the organization.[10/] While there are limitations on the extent to which civil courts can inquire into and determine purely ecclesiastical matters, it is clear that the evidence submitted to the Superior Court by Plaintiffs was evidence that the court could properly consider. In *Presbyterian Church in the United States v. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), this Court noted that the civil courts have "no role" in

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10/ This is not a dispute between units of UMC, a suit seeking review of any internal church ruling, a suit by a governmental agency attempting to impose any regulation upon UMC, or a suit affecting the manner in which Methodists exercise their beliefs. No reported case has been cited, and none has been found, where a suit for fraud or breach of contract by third parties against a religious organization was barred by the First Amendment. Every case cited by GCFA involved either an internal church dispute or the attempt of a governmental entity to regulate a church.

determining *ecclesiastical questions* in the process of resolving internal property disputes. However, it went on to authorize judicial resolution of internal property disputes, provided it could be done by the application of "neutral principles of law," and stated that such an approach does not violate the First Amendment. *Id.* at 449. *See also Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940) ("Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit fraud upon the public.").[11/]

11/ In *Securities and Exchange Commission v. World Radio Mission, Inc.*, 544 F.2d 535 (1st Cir. 1976), the defendant religious organization claimed that its allegedly fraudulent action in connection with the sale of securities to the public was entitled to First Amendment protection. The court rejected this claim.

As Justice Traynor has stated:

> Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and other commercial enterprises. *Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe.* If they were given such freedom, the direct consequence of their activities would be a diminution of the state's power to protect the public health and safety and the general welfare. With that power so easily diminished there would soon cease to be that separation of church and state underlying the constitutional concept of religious liberty.

The Gospel Army v. City of Los Angeles, 27 Cal.2d 232, 245, 163 P.2d 704 (1945) (emphasis added). Likewise

The true thrust of GCFA's constitutional arguments is that GCFA, as part of a "world wide religious organization," has immunity against any suit against it for fraud, breach of contract or statutory violations and that it cannot be held answerable for such conduct by the courts *except on its terms*. This is not the law.

Footnote 11 continued

> *. . . the belief "that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment" has been consistently repudiated. . . .*
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> *We have closely considered the Church's contention that as a democratic, autonomous, separatist and congregatinal Baptist Church, considering itself free from any "human authority whether civil or ecclesiastical," it merits special concern of the First Amendment, even in the area of property rights. The contention is found invalid. . . .* "As long as civil or property rights are involved, the courts will entertain jurisdication of controversies in religious bodies although some ecclesiastical matters are incidentally involved."

In Re Metropolitan Baptist Church of Richmond, Inc., 48 Cal.App.3d 850, 858-60, 121 Cal.Rptr. 899 (1975) (emphasis added). Contrary to GCFA's assertions that the Superior Court's decision disestablishes religion, for this Court to create a preferred status for religious organizations in ordinary civil litigation would be tantamount to the establishment of religion. *Abington School District v. Schemp*, 374 U.S. 203 (1963).

The United States Court of Appeals for the Fifth Circuit recently rejected a broad free exercise of religion defense in the case of *Brown v. Dade Christian Schools, Inc.*, 556 F.2d 310 (5th Cir. 1977), *cert. denied* ___ U.S. ___ (February 28, 1978). The defendant sectarian school, located on the property of and receiving subsidies from a Baptist Church, contended that its members "held a religious belief that socialization of the races would lead to racial inter-marriage, and that this belief, sanctioned by the Free Exercise Clause. . . ." protected its segregationalist enrollment policy. *Id.* at 311.

In the course of the Fifth Circuit's opinion upholding the trial court's finding that the segregation policy was not part of the exercise of religion, the court stated:

> In such a situation, the only practical course open to a Court is to examine the corporate beliefs of the institution involved, as adopted or promulgated or carried forward as an institutional concept. *To do otherwise would allow the institution to pick and choose which of its members' potentially conflicting beliefs it wished to assert at any given time. . . .*
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> * * *
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> When the lawfulness of an activity of any such institution is in question, the focus of the inquiry must be upon the basis for the institution's activity. Whether it be the troop's policy for the award of merit badges, the hospital's requirements for staff privileges, or the college's admission principles, the basis is that particular *institution's* basis. *Whether or not it is the exercise of religion or simply a policy of the institution not presenting constitutional issues is a question of fact.*

Id. at 313-314 (emphasis added, except to "institution's").[12/]

Thus, the Fifth Circuit, *en banc*, made clear that not every proclamation of beliefs by a religious body entitles the body to bar judicial inquiry into the purported beliefs. The decision also makes clear that a court can reach a decision contrary to the position of the body asserting such beliefs without fear of violating the Establishment Clause.

The First Amendment gives to religious organizations neither the right to "pick and choose" (*Brown, supra* at 313-314) what evidence amounting to "neutral principles" can be submitted to courts nor the right to cloak whatever position it chooses to take in litigation in the garb of protected religious freedom. A court may properly look to all the evidence and make a factual determination; it is not bound by the First Amendment to accept the religious body's views.

GCFA's attempt to induce this Court to grant certiorari because this action "is without precedent in Anglo-American jurisprudence" (GCFA Petition at 6) is unwarranted.

12/ Plaintiffs recognize that the issue before the *Brown* Court was emotionally charged and that the Court was closely divided. The issue here, however, does not parallel that in *Brown;* it is whether a religious body may avoid answering for alleged tortious conduct and breach of contract in California merely by claiming that it had insufficient contacts with California and is not in fact the central treasury and fiscal agent of UMC.

Religious denominations, including UMC, have previously been sued as such. *Presbyterian Church in the United States v. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 150 Ind.App. 574, 276 N.E.2d 916 (1971). GCFA's rhetoric aside, there is nothing unprecedented about this case.

II.

THE FIRST AND FOURTEENTH AMENDMENTS DO NOT REQUIRE A STATE COURT TO APPLY A SPECIAL AND RESTRICTIVE JURISDICTIONAL TEST IN DETERMINING WHETHER NON-RESIDENT RELIGIOUS CORPORATIONS ARE SUBJECT TO THE STATE'S JURISDICTION.

GCFA has yet to cite any authority to support its novel proposition that it, as a corporation with religious affiliations, is entitled to a special and restrictive jurisdictional test when sued in a state other than Illinois.[13/]

13/ The only reported case concerning the exercise of long arm jurisdiction over a non-profit religious corporation is *Barnstone v. Congregation Am Echad*, 514 F.2d 286 (5th Cir. 1978). In *Barnstone*, a breach of contract action, the Fifth Circuit applied the usual minimum contacts test to determine the jurisdiction of a federal district court in Texas over a non-profit religious corporation registered and located in Maine. No claim of entitlement to a special test was made by the religious corporation.

In denying GCFA's motion for stay, Justice Rehnquist stated:

> Likewise untenable, in my view, is applicant's claim that the First and Fourteenth Amendments somehow forbid resort to traditional minimum contacts analysis in determining the existence of *in personam* jurisdiction over a defendant that is affiliated with an organized religion. Not surprisingly, applicant has failed to cite any authority in support of this novel proposition.

The General Council on Finance and Administration of The United Methodist Church v. Superior Court of California, County of San Diego, ___ U.S. ___ (No. A-200, Sept. 1, 1978, Slip Opinion at 5) (Rehnquist, J., in chambers).

In *Sipple v. Des Moines Register and Tribune Co.*, 82 Cal.App.3d 143, ___ Cal. Rptr. ___ (1978), the court rejected the argument of out of state newspapers which claimed a "special preference" or "special privilege" under the First Amendment concerning the application of California's long arm statute to them. Relying on *First National Bank of Boston v. Bellotti*, ___ U.S. ___, 98 S.Ct. 1407 (1978), the court found that the First Amendment *"fails to give special protection from jurisdiction to defendants whose tortious acts performed out of the state arise from exercise of rights arguably protected by the First Amendment." Id.* at 149 (emphasis added). While GCFA's claim for special preference in this action is phrased in terms of religious liberty, it is legally indistinguishable from the claim raised by the defendants in *Sipple* and is equally meritless.

To establish a rule of constitutional import that religious organizations in ordinary civil litigation are entitled to a jurisdictional test applicable only to such organizations and more restrictiye than that generally applied under the *Internatinal Shoe* doctrine would grant such organizations a preferred status which itself would amount to the establishment of religion and offend the First Amendment. *Abington School District v. Schemp, supra.*

III.

GIVEN GCFA'S SUBSTANTIAL ONGOING CONTACTS WITH CALIFORNIA, THE SUPERIOR COURT CORRECTLY HELD THAT IT COULD, CONSISTENT WITH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, EXERCISE JURISDICTION OVER GCFA.

GCFA's attempt to argue that its contacts with California were not sufficient to permit the exercise of jurisdiction over it under the principles of *International Shoe Co. v. Washington, supra,* and *Hanson v. Denckla,* 357 U.S. 235 (1958), raises no issue of constitutional significance. There is no reason to believe, and GCFA does not contend, that the Superior Court applied an incorrect legal standard in this regard. GCFA argues only that the evidence does not support the Superior Court's conclusion that it does business in California. Such questions depend upon the particular facts of each case. *Kulko v. Superior Court,* 436 U.S. ___ (May 15, 1978). Only a marked departure from established law would justify certiorari in these circumstances. No such departure is present since the Superior Court's conclusion that GCFA was doing business in California is supported by overwhelming evidence.

As the central treasury of UMC, GCFA is the repository of funds collected from local UMC churches throughout the world - including California. GCFA received $60,185,177.79 during 1976, and $233,398,172.93 during 1973-1976, from local UMC churches through its collection system. App. Ex. No. M (Ex. No. 2 at 17-18).

United Methodist Churches in California forward a portion of the funds collected by them to the treasurer of one of the two Annual Conferences located in California,[14]/ which, acting as conduits, forward the funds to GCFA in Illinois. These funds are remitted on a monthly basis. App. Ex. No. 14 at 26-32. *The Annual Conference treasurer has absolutely no discretion in determining either the amount of funds to forward to GCFA or when to forward these funds.* App. Ex. No. 14 at 26; App. Ex. No. N at 71. During the three years ending with 1976 $6,239,371.53 had been received by GCFA from its California Annual Conferences.[15]/ GCFA's billings to its California Annual Conferences for 1977 and 1978 were $2,357,160 and $2,566,458 respectively. App. Ex. No. S (Ex. Nos. 47-56). The California Annual Conference treasurers file detailed monthly and annual reports with GCFA. App. Ex. No. 15 at 184-186; App. Ex. No. S (Ex. Nos. 76-81).

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[14]/ The Annual Conference is the basic administrative body in UMC, bearing responsibility for the work of UMC in a specific geographic territory. *BOD/UMC,* Glossary at 597 (citing *BOD/UMC* ¶ 36-41). PSWAC and the California-Nevada Annual Conference (CAL/NEV) are the two Annual Conferences which function in California.

[15]/ Source: GCFA monthly remittance forms for PSWAC and CAL/NEV 1975-1977, App. Ex. No. S (Ex. Nos. 76-81).

In performing its functions for UMC, GCFA has had continuous contact with and presence in California. In the recent past, 13 of GCFA's titled personnel have traveled to, been present in, and conducted business in California and 18 have had correspondence or telephonic communication with persons located in California. App. Ex. No. 15 at 161-168; App. Ex. No. P at 185, 187-189.

In 1974 and 1976 GCFA sponsored UMC meetings in San Francisco known as Western Jurisdictional Workshops. App. Ex. No. 15 at 157, 159-160. GCFA prepared workshop materials, agendas and programs, which were disseminated to the local participants for use at the workshops. *Id.* at 158. Nine members, employees and/or representatives of GCFA attended the 1974 and 1976 workshops. *Id.* at 154-155, 160-161.

As part of its work as fiscal agent for UMC, GCFA administers "[t]he General Church Insurance program" providing liability insurance to "churches, parsonages, conference centers, schools, hospitals, homes, camps and other related United Methodist facilities." App. Ex. No. M (Ex. No. 2 at 19). This program is functioning in California. App. Ex. No. N at 124; App. Ex. No. Q (Ex. Nos. 68, 69, 77, 82 & 109). Some 3,762 policies were in force at year end 1976 (App. Ex. No. M (Ex. No. 2 at 19)), insuring "[c]hurch property valued at $1,200,000,000." App. Ex. No. M. (Ex. No. 2 at 72). Numerous UMC churches in California have assigned their portion of the premium dividend to the United Methodist Insurance Trust which is administered by GCFA. App. Ex. No. 13 (Ex. Nos. 1-10).

PSWAC, and other UMC agencies in California, have a contractual understanding with GCFA whereby they utilize

data processing equipment available to GCFA, paying GCFA for such use. App. Ex. No. 14 at 42. GCFA submits invoices for these data processing services on a monthly basis to PSWAC in Los Angeles, who then pays the invoices. App. Ex. No. 14 at 42-43. Since June 1975, GCFA has, on a monthly basis, submitted its invoices to PSWAC in an amount aggregating $59,653.17, and has received payments aggregating $51,277.70. App. Ex. No. Q (Ex. Nos. 39-40); see also App. Ex. No. 14 at 42-44.

GCFA administers the "Episcopal Fund," from which it pays the annual salaries and expenses (housing, office and travel) of UMC bishops. *BOD/UMC,* ¶¶921-925 at 356-358; App. Ex. No. 15 at 172-177; App. Ex. No. N at 103. Two UMC bishops are headquartered in California. App. Ex. No. Q (Ex. No. 124 at 12); App. Ex. No. 14 at 57; App. Ex. No. N at 102. In 1976 alone, GCFA disbursed to these two California Bishops amounts aggregating $113,177 for salaries, housing allowance, office and travel expenses. App. Ex. No. M (Ex. No. 2 at 154-155); App. Ex. No. N at 126. Each year UMC Bishops prepare proposed budgets for their offices which are submitted to GCFA for approval. App. Ex. No. N at 127.

Members of GCFA (who are also it directors) have been and still are residents of California during their respective terms in office. During the present quadrennium (1977-80), four members and directors of GCFA reside in California (App. Ex. No. Q (Ex. No. 124 at 102); App. Ex. No. N at 59-60) and two of them serve as members of GCFA's Executive Committee. App. Ex. No. Q (Ex. No. 124 at 101). During the 1973-1976 quadrennium, four members of GCFA were California residents (App. Ex. No. S (Ex. No. 13 at 98)), two of them

served on GCFA's Executive Committee (*Id.* at 97) and GCFA's Recording Secretary, while a California resident, performed her duties from her home. *Id.* at 97; App. Ex. No. N at 66-67.

This record fully supports the Superior Court's conclusion that GCFA had sufficient "minimum contacts" with California to require it to defend this action in California without violating the due process clause of the Fourteenth Amendment. No error of constitutional significance occurred in this regard.

CONCLUSION

For the reasons set forth herein, GCFA's Petition for Writ of Certiorari should be denied.

Dated this 22nd day of September, 1978.

Respectfully submitted,

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